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DOCKET FILE COPY ORIGINAL  
April 21, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

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APR 21 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

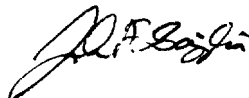
Re: Amendment of Section 73.202(b),  
FM Table of Allotments  
(Sheridan, Wyoming and Colstrip, Montana)

Dear Ms. Salas:

Transmitted herewith on behalf of Community Media, Inc. is an original and four copies of a Petition for Rule Making seeking the commencement of a proceeding to amend the FM Table of Allotments to substitute Channel 229C for Channel 243C3 at Sheridan, Wyoming, and the modification of the construction permit of KYTI(FM) to specify operation on Channel 229C (FCC File No. BPH-980211IE); and the substitution of equivalent Channel 258A for Channel 229A at Colstrip, Montana, and to require the amendment with cut-off protection of the pending application for construction permit at Colstrip, Montana filed by Brian M. Encke (FCC File No. BPH-970731MK) to specify Channel 258A.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



John F. Garziglia

Enclosure

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Sheridan, Wyoming and )  
Colstrip, Montana) )

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APR 21 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

**PETITION FOR RULE MAKING**

Community Media, Inc. ("CMI"), the licensee of KYTI(FM), Sheridan, Wyoming, by its attorneys and pursuant to Sections 1.401 and 1.420(g) of the Commission's Rules, hereby seeks a non-adjacent upgrade of the construction permit for KYTI, by the institution of a rule making proceeding to substitute Channel 229C for Channel 243C3 at Sheridan, Wyoming, and to modify the construction permit of KYTI(FM) to specify operation on Channel 229C (FCC File No. BPH-980211IE)<sup>1/</sup>; and to substitute equivalent Channel 258A for Channel 229A at Colstrip, Montana, and to require an amendment with cut-off protection to the pending application for construction permit at Colstrip, Montana filed by Brian M. Encke (FCC File No. BPH-970731MK) ("Encke Application") to specify Channel 258A. In support whereof, the following is respectfully submitted:

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<sup>1/</sup> CMI seeks the modification of the recently granted construction permit for KYTI (FCC File No. BPH-980211IE) with reference coordinates 44-37-20 North Latitude and 107-06-57 West Longitude, of which an application for license to cover has not yet been filed.

1. The following changes are proposed to the FM Table of Allotments:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Sheridan, Wyoming	235C1, <sup>2/</sup> 243C3	235C1, 229C
Colstrip, Montana	229A	258A

2. CMI's proposed non-adjacent channel upgrade may be properly made in full compliance with Commission Rules.<sup>3/</sup> See Attached Engineering Exhibit prepared by Mueller Broadcast Design ("Engineering Exhibit"). Although CMI's proposed channel allocation of Channel 229C at Sheridan, Wyoming is short-spaced to the application filed by Brian M. Encke ("Encke") seeking facilities for Channel 229A at Colstrip, Wyoming, there is an equivalent channel (e.g., Channel 258A) to substitute for Channel 229A at Colstrip, Wyoming. See e.g., Okmulgee, Nowata, Pawkuska, Bartlesville, Bixby, Oklahoma and Rogers, Arkansas, 10 FCC Rcd 12014 (1995) (Substitution of equivalent Class A channels to accommodate upgrade of a station from Class C2 to Class C1.); Randolph and Brandon, Vermont, 6 FCC Rcd 1760 (1991) (Substitution of an equivalent Class A channel for a vacant but applied for Class A channel with cut-off protection to accommodate an upgrade of a station from a Class A to a Class C3 facility.). Channel

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<sup>2/</sup> An application is on file seeking a "one-step" upgrade of KZWY(FM), Sheridan, Wyoming from Channel 235C1 to Channel 235C (FCC File No. BPH-980217IF).

<sup>3/</sup> Pursuant to Section 1.420(g) of the Commission's Rules, in the event an expression of interest is filed in a new allotment at Sheridan, Wyoming, there is an available Class C allotment that may be made. See e.g., Barnesboro, Pennsylvania, 11 FCC Rcd 2894 (1996); see also Engineering Exhibit, at 1.

258A is fully spaced at the transmitter site specified in the Encke Application (45-53-42 North Latitude; 106-36-38 West Longitude). Engineering Exhibit, at 1.

3. Although there are other available channels which are fully spaced as Class C channels at Sheridan, CMI is requesting Channel 229C because of its proximity in channels to the co-owned KZWY(FM), Sheridan, Wyoming frequency.<sup>4/</sup> Upgrading KYTI to Channel 229C will allow for diplexed operation of KYTI and KZWY. Diplexed operation necessitates that the KYTI and KZWY frequencies be reasonably close. Diplexed operation of KYTI and KZWY will serve the public interest by allowing Lovcom and CMI to operate both stations using only one antenna, resulting in one less discrete source of radiofrequency radiation. This will alleviate some of the public's concerns related to environmental and aesthetic issues associated with multiple radio transmission facilities.

4. Diplexed operation of KYTI and KZWY will further serve the public interest by allowing Lovcom and CMI to benefit from co-location of KYTI and KZWY. Lovcom and CMI will be able to take advantage of the savings resulting from diplexed operation. These savings may be redirected to better serve the public through additional community service programming.

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<sup>4/</sup> KZWY, which operates on Channel 235C1, is licensed to Lovcom, Inc. ("Lovcom"). Lovcom and CMI are co-owned by common principals. Lovcom currently has a pending application seeking the modification of the facilities of KZWY to specify a new transmitter site, among other things (FCC File No. BPH-980217IF).

5. The Encke Application is still pending before the Commission. Thus, Encke is not yet a permittee or licensee. As such, CMI is not required to reimburse Encke for changing frequencies in order to accommodate CMI's upgrade under current Commission precedent. When an existing station is ordered to change frequencies to accommodate a new allotment, the Commission's policy requires that proponent of the new allotment reimburse the costs incurred by the existing licensee or permittee for changing frequencies. See Circleville, Ohio, 8 FCC 2d 159 (1967); North Canaan and Sharon, Connecticut, 1997 FCC Lexis 4345 (August 15, 1997). Since Encke is not yet an existing permittee or licensee, no reimbursement statement is required. See e.g., Randolph and Brandon, Vermont, 6 FCC Rcd 1760 (1991) ("Only licensees and permittees are entitled to reimbursement."); Gleneden Beach, Sweet Home and Toledo, Oregon, 4 FCC Rcd 7796 (1989).

6. Accordingly, the Commission should substitute Channel 229C for Channel 243C3 at Sheridan, Wyoming and modify the construction permit of KYTI(FM) to specify operation on Channel 229C; and substitute Channel 258A for Channel 229A at Colstrip, Montana to accommodate the upgrade of KYTI. CMI hereby states its intention to apply for Channel 229C when allotted, and when authorized, to construct and implement the upgrade of KYTI promptly.


WHEREFORE, for the reasons above, the commencement of a rule making proceeding is respectfully requested looking toward the

substitution of Channel 229C for Channel 243C3 at Sheridan, Wyoming, and the modification of the construction permit of KYTI(FM) to specify operation on Channel 229C (FCC File No. BPH-980211IE); and the substitution of equivalent Channel 258A for Channel 229A at Colstrip, Montana, and to require the amendment with cut-off protection of the pending application for construction permit at Colstrip, Montana filed by Brian M. Encke (FCC File No. BPH-970731MK) to specify Channel 258A.

Respectfully submitted,

**COMMUNITY MEDIA, INC.**

By: \_\_\_\_\_

  
John F. Garziglia  
Patricia M. Chuh  
Its Attorneys

Pepper & Corazzini, L.L.P.  
1776 K Street, N.W.  
Suite 200  
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(202) 296-0600

April 21, 1998

ORIGINAL

**Mueller Broadcast Design**

613 S. La Grange Road  
La Grange, Illinois 60525

**ENGINEERING EXHIBIT FOR  
COMMUNITY MEDIA  
SHERIDAN, WYOMING**

This engineering exhibit was prepared in support of a Petition for Rulemaking being filed by Community Media to amend 47 CFR 73.202(b).

Community Media proposes that channel 229C be allocated to Sheridan, Wyoming in lieu of currently allocated channel 243C3. Community Media is the licensee of KYTI (FM), Sheridan, Wyoming which is licensed to operate on 243C3 at Sheridan. It is requested that the license of KYTI be modified to specify the new channel. Community Media will file FCC form 301 for the new channel and class as soon as this petition is granted.

The proposed channel allocation can be made in full compliance with FCC rules from a reference point at the KYTI (FM) construction permit site (BPH-980211E), except for one other allocation. Vacant channel 229A, allotted to Colstrip, Montana is short-spaced to the proposed channel 229C allotment at Sheridan. It is proposed to change the Colstrip channel to 258A. There is no impact to the pending applicant at Colstrip (BPH-970731MK) as channel 258A is fully spaced at the specified transmitter site as well as at the allocation reference point, which remains unchanged.

The NAD 27 geographic coordinates of the Sheridan 229C reference point are:

**44° 37' 20"N - 107° 06' 57"W**

The attached tabulations illustrate the spacings for the 229C allocation at Sheridan, showing full compliance with the relevant provisions of 47 CFR 73.207.

**Mueller Broadcast Design**

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La Grange, Illinois 60525

It is hereby respectfully proposed that the FM table of allotments at 47 CFR 73.202(b) be amended as follows:

<u>Community of License</u>	<u>Present</u>	<u>Proposed</u>
Sheridan, Wyoming	235C1, 243C3	235C1, 229C
Colstrip, Montana	229A	258A

It is respectfully submitted that the allotment of channel 229C as outlined herein is in the public interest, will result in a fair and efficient distribution of allocations, and provide Sheridan, Wyoming and the surrounding area with its second wide-area FM commercial broadcast service, thus expanding broadcast service to the public.

The proposed channel substitution at Colstrip, Montana will result in an equivalent channel as that currently allotted and will have minimal impact on the pending applicant, since that application has yet to be granted and the only change necessary is the channel.

This engineering exhibit was prepared by me and is true and correct to the best of my knowledge and belief.

March 29, 1998



Mark A. Mueller



FM Channel Search for: **Sheridan, Wyoming**  
Coordinates used: 44-37-20/107- 6-57

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La Grange, Illinois 60525

NOTE: All distances are in Kilometers. Any stations which  
clear by more than 100 KM are not included in list.

Study for channel 229-C ( 93.7MHz )					-----Spacing-----			--Contours--	
CH#	Call	File	Location	Class	Actual	FCC	Clearance	60	Int.
227 ( 93.3 MHz )									
	KYYA	LIC	Billings	MT C1	164.4	105	59.4 @ 320.8°	64.8	29.0
		USE	Billings	MT C1	164.4	105	59.4 @ 320.8°	3.2	1.1
228 ( 93.5 MHz )									
		ADD	Moorcroft	WY A	176.8	165	11.8 @ 102.3°	3.2	4.5
230 ( 93.9 MHz )									
		USE	Riverton	WY C1	227.1	209	18.1 @ 201.8°	3.2	4.5
	KTAK	LIC	Riverton	WY C1	227.1	209	18.1 @ 201.8°	64.6	94.4
231 ( 94.1 MHz )									
	KRKX	LIC	Billings	MT C1	164.4	105	59.4 @ 320.8°	61.9	27.0
		USE	Billings	MT C1	168.7	105	63.7 @ 320.3°	3.2	1.1

This channel can be used by a class-C station.

FM Channel Search for: Colstrip, Montana  
Coordinates used: 45-53-42/106-36-38

## Mueller Broadcast Design

613 S. La Grange Road  
La Grange, Illinois 60525

NOTE: All distances are in Kilometers. Any stations which  
clear by more than 100 KM are not included in list.

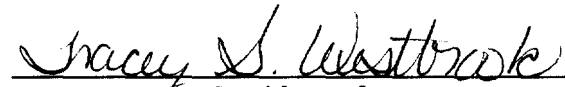
Study for channel 258-C ( 99.5MHz )					-----Spacing-----			--Contours--	
CH#	Call	File	Location	Class	Actual	FCC	Clearance	60	Int.
204	( 88.7 MHz )								
	NEW	APP	Sheridan	WY A	124.4	29	95.4 @ 191.8°	8.7	1.0
257	( 99.3 MHz )								
		USE	Red Lodge	MT A	226.4	165	61.4 @ 250.8°	3.2	4.5
	KMXE	LIC	Red Lodge	MT A	227.1	165	62.1 @ 250.9°	29.0	43.2

This channel can be used by a class-C station.

**CERTIFICATE OF SERVICE**

I, Tracey S. Westbrook, a secretary in the law firm of Pepper & Corazzini, L.L.P., certify that the foregoing Petition for Rule Making was mailed on this 21st day of April, 1998 to the following by first class mail, postage prepaid.

Brian M. Encke  
1503 Copperville Road  
Cheyenne, WY 82001

  
Tracey S. Westbrook